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VIA MESSENGER

Magalie Roman Salas, Secretary Federal Communications Commission 1919 M. Street, N.W. Washington, D.C. 20554

Re: CC Docket 98-147

Dear Ms. Salas:

On Monday, November 2, 1998, Glenn B. Manishin, Jeffrey Blumenfeld and the undersigned, counsel for Rhythms NetConnections Inc., met with Jason M. Oxman and Jonathan M. Askin of the Common Carrier Bureau, Robert M. Pepper of the Office of Plans and Policy, and Stagg Newman of the Office of Engineering and Technology to discuss issues relating to the Commission Notice of Proposed Rulemaking in the above-captioned proceeding.

The substance of the meeting revolved around a discussion of the economic incentives and ability of incumbent local exchange carriers ("ILECs") to deny digital subscriber line ("DSL") competitors access to necessary network elements, namely unbundled copper loops and access to physical collocation. Attached please find a copy of the slides presented during our meeting.

Sincerely,

Frank V. Paganelli

cc: Jason M. Oxman, Common Carrier Bureau
Jonathan M. Askin, Common Carrier Bureau
Robert M. Pepper, Office of Plans and Policy
Stagg Newman, Office of Engineering and Technology

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## LEC Power Over DSL Competition

- Vertically-integrated LECs have the incentive and ability to impede competition
- Incentive flows from being in both input and output markets
- Ability flows from market power over the "first mile"



### LEC Power Over DSL Competition

- That means keeping competitors out of vertical markets while taking advantage of "first to market" and "integrated provider" advantages
- Because LECs control inputs competitors require, easiest way to keep competitors out is to just say "NO" to supplying inputs.



### Where "NO" Is Not An Option

- Because the LECs are now prohibited by law from from simply denying competitors access to their network, the LECs have been forced to employ less obvious responses to impede competition.
- Where "Flat NO" is not an option,
  LECs get as close to "NO" as they can



## Where "NO" Is Not An Option

- "Flat NO" replaced by combination of "Specific NO" and very grudging "Sort Of" through control over
- 1) Availability
- 2) Interval
- 3) Price

of inputs LECs control:

loops and access to loops (l.e., collocation)



## What DSL-based CLECs Need to Compete

- 1) Copper loops unencumbered by load coils or excessive bridge taps
- 2) Access to both ends of the loop through collocation of DSL equipment



RHYTHMS

## LECs Deny Access to "Clean" Loops

- The LECs use control over availability, interval and price to deny access to unbundled copper loops required for provision of DSL.
- Creative ways to say "NO"
- General Access
- "No such UNE"
- Spectrum Management
- DLC Remote Terminals
- "Subloop Unbundling"
- Spectrum Unbundling
- Loop "Price Squeeze"



# LECs deny access to physical collocation

physical collocation required for provision of DSL: The LECs use control over availability, interval and price to deny access to the

- Space Exhaustion
- Collocation intervals
- Build-out cost
- Build-out intervals



### Remedy

LEC actions and FCC responses must be tested against basic principles:

- Do they increase or decrease availability?
- Do they lengthen or shorten interval?
- Do they increase or decrease price?



#### Remedy

- 1996 Telecom Act does not change LEC anticompetitive incentives
- Commission cannot change LEC anticompetitive incentives
- Both Act and FCC can only address LEC anticompetitive abilities
- LECs will continue to replace "outlawed" activities with new ones
- Active Commission oversight must continue



#### Remedy

- Rules must be written very specifically
- Rules must require strict and rapid compliance
- Enforcement is crucial



### Separate Subsidiary

- Separate subsidiary requirement eases enforcement load
- Mandates true "equity"

"they can do for themselves only what they do for their competitors"

- Makes "violations" more obvious
- Only works if subsidiary is truly separate
- Commission's NPRM rules create truly separate subsidiary

More rules are not necessary Less rules are not enough

